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9 BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
HELENA, MONTANA

10	IN THE MATTER OF THE PROPOSED)	INS-2007-1
11	AGENCY ACTION REGARDING THE)	
12	INSURANCE PRODUCERS LICENSE OF)	NOTICE OF PROPOSED AGENCY
13	PHILIP E. SHIPLEY, License #PRO007959)	DISCIPLINARY ACTION AND
)	OPPORTUNITY FOR HEARING
)	(ADMINISTRATIVE FINE)

14 TO: PHILLIP E. SHIPLEY
15 SHIPLEY AGENCY
2020 CONCORD DR
16 BILLINGS, MT 59102

17 PLEASE TAKE NOTICE:

18 Staff of the Insurance Department (the Department) of the office of the State Auditor and
19 Commissioner of Insurance of the state of Montana (Commissioner), pursuant to the authority of
20 the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, is proposing that the
21 Commissioner take disciplinary action against the insurance producer license of Phillip E.
22 Shipley for violations of Title 33, Chapters 2 and 17 of the Montana Code Annotated.
23 Specifically, staff is proposing that an administrative fine be imposed. The Commissioner has
24 authority to take such action under the provisions of Mont. Code Ann. §§ 33-1-311, 33-1-314,
25 33-1-317, 33-17-201, 33-17-211, 33-17-1001, and 33-17-1002, 33-17-1205.

26 Service of process is effective by certified mail pursuant to Mont. Code Ann. § 33-1-314.
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There is reasonable cause to believe that the following facts will be proven true and justify disciplinary action against the insurance producer license of Phillip E. Shipley.

FACT ASSERTIONS

1. At all times material hereto, Insurance Producer, Philip E. Shipley (Shipley) conducted business as the Shipley Agency. Shipley Agency was registered in 1995 with the Montana Secretary of State but allowed his registration to lapse on August 4, 2000. Shipley renewed his registration with the Secretary of State in 2005 after an inquiry from the Department. Shipley does not have an agency license and his Producer licence does not contain a DBA or show any affiliation with other agents or agencies working with Shipley Agency.

2. On or about September 13, 2005, Shipley was mailed a general advisory letter which indicated that his Montana Insurance License (PRO007959) was due for renewal.

3. Together with the general advisory letter, Shipley was mailed Form CE-1 (2005 Montana Insurance Continuing Education Written Certification).

4. In the general advisory letter Shipley was advised to complete a Form CE-1 and return it to the Montana Insurance Department prior to his 2005 license lapse date.

5. On or about November 10, 2004, Shipley was contacted by Continuing Education Coordinator Mary Arnold (Arnold) to advise him that his license had lapsed due to his failure to comply with his 2001, 2002, and 2003 insurance continuing education filing requirements. Arnold further advised Shipley what steps were necessary for Shipley to take in order to complete the requirements for reinstatement of his license.

6. On or about January 19, 2005, Shipley completed and signed a State of Montana Department of Insurance Reinstatement Form (Reinstatement Form).

7. By signing the Reinstatement Form Shipley acknowledged that he understood that he could not conduct the business of insurance in Montana until his license was reinstated, that he understood that he must be reappointed to any company he intended to represent in Montana, and

1 that he agreed to contact the company or companies that he intended to represent in order to
2 advise the same to submit the proper appointment(s) to the Montana Insurance Department.

3 8. The Reinstatement Form indicated that Shipley's license had lapsed on August 1,
4 2004.

5 9. On or about February 4, 2005, Montana Insurance Department Licensing Division
6 received the Reinstatement Form and fees for Shipley's 2001, 2002, and 2003 continuing
7 education reports from Shipley. A note to Shipley's file states: "Missing is 1 credit hour to
8 complete the 15 credit hour requirement on his 2002 CE report."

9 10. On February 17, 2005, Shipley was sent an audit request letter.

10 11. On or about April 22, 2005, Arnold left a telephone message for Shipley regarding
11 his failure to respond to the audit request letter sent February 17, 2005.

12 12. On April 26, 2005, Shipley responded to Arnold's message. Arnold advised Shipley
13 that the lapse date for his license had passed since the reinstatement process began in November
14 of 2004. Additionally, Shipley was advised that he still needed to complete .5 credit hours to
15 complete his 2002 filing and 9 credit hours to complete his 2005 filing form.

16 13. On June 24, 2005, the Department received a complaint from a Montana insurance
17 producer D.D. who reported that Shipley had tried to bind coverage for R.T. with Dairyland
18 Insurance Company. R.T. was already insured through D.D's insurance agency.

19 14. On July 20, 2005, Shipley reported to Mary Arnold that he had completed his
20 continuing education requirements and on July 31, 2005, Shipley's license was reinstated.

21 15. On August 4, 2005, Cheri Meier spoke with Sherri Rindfleisch, who is or was in the
22 Agency Sales Support Division at Dairyland Insurance Company. According to Rindfleisch,
23 Shipley's agent appointment with Dairyland Insurance Company was terminated at the time he
24 bound coverage for an insured (R.T). Rindfleisch suggested that Meier write to JoAnn Amick at
25 Dairyland concerning the matter which Meier did on August 5, 2005.

26 16. On August 12, 2005, Joe Vogel from Dairyland's Audit and Standards Bureau
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1 contacted Meier and reported finding insurance business written by Shipley between January 19,
2 2005 and July 31, 2005. During said period, the business was written under two agent codes:
3 2401908 which was the code assigned to Diane Brien who had worked with Shipley; and code
4 number 2401911 which was the code assigned to Shipley. From the reports submitted by Joe
5 Vogel it appears that 33 policies were issued under agent code 2401911 (Shipley's code) between
6 January 20, 2005 and June 16, 2005. Additionally, from the said reports, it appears that 149
7 policies were issued under agent code 2401908 (Diane Brien's code) between March 8, 2005
8 and July 30, 2005.

9 17. The Department contacted Alan Olsen, Compliance Officer for Financial Indemnity
10 Company. On October, 7, 2005, Olsen reported that 359 accounts were written by the Shipley
11 Agency during the period of January 19, 2005 and July 31, 2005 under the identification number
12 for the Shipley Agency.

13 18. Diane Brien was hired by Shipley as a temporary employee. Brien took maternity
14 leave on January 1, 2005 and did not thereafter return to work. A review of the Dairyland
15 business produced for agent 240198 (Brien) indicated that 149 policies written between March
16 10, 2005 and July 30, 2005. When questioned by the Department Brien represented that she was
17 unaware of any business completed under her agent number or that her signature had been forged
18 on applications since her termination of employment with Shipley.

19 19. Additionally, Dairyland records indicated that 33 policies were written by agent
20 2401911 (Shipley) between January 20, 2005 and June 10, 2005.

21 20. On or about October 2, 2005, in a letter to Department Investigator Bloom, Shipley
22 admitted to forging Diane Brien's signature on applications, to wit: "After Diane went on
23 maternity leave, on 1-1-05, I signed her name to the applications for a while, because I was
24 confused and concerned about the status of my license, while I was in the process of getting my
25 CE requirements to get my license reinstated. The accounts belong to Shipley Agency."

26 21. On June 19, 2006, Investigator Meier requested Shipley to forward copies of the
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1 forged documents, and on June 28, 2006, Shipley faxed three of the Dairyland Insurance
2 Company applications upon which Shipley had forged Brien's signature. On July 31, 2006,
3 Department investigators obtained copies of applications written by Shipley utilizing Brien's
4 signature and agent number. Investigator Meier also discovered a Financial Indemnity Binder for
5 applicant C.H. dated January 6, 2005 with Brien's forged signature.

6 22. On July 31, 2006, Brien confirmed that the signatures purporting to be hers on the
7 three applications provided by Shipley and the Financial Indemnity Binder were, in fact, not her
8 signatures.

9 CONCLUSIONS OF LAW

10 1. The State Auditor is the Commissioner of Insurance pursuant to Mont. Code Ann. § 2-
11 15-1903.

12 2. The Montana Insurance Department (Department) is under the control and supervision
13 of the Commissioner pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

14 3. The Commissioner and Insurance Department have jurisdiction over this matter.
15 Mont. Code Ann. § 33-1-311.

16 4. The Commissioner shall administer the Insurance Department to protect insurance
17 consumers. Mont. Code Ann. § 33-1-311(3).

18 5. Pursuant to Mont. Code Ann. § 33-1-102(1), a person or entity may not transact
19 a business of insurance in Montana or a business relative to a subject resident, located, or to be
20 performed in Montana without complying with the Montana Insurance Code, Mont. Code Ann. §
21 33-1-101, *et seq.*

22 6. Pursuant to Mont. Code Ann. § 33-17-201(1), a person may not sell, solicit, or
23 negotiate insurance or act as an insurance producer in this state unless licensed as an insurance
24 producer under this chapter.

25 7. Pursuant to Mont. Code Ann. § 33-17-211(2): a resident or nonresident business entity
26 acting as an insurance producer is required to obtain an insurance producer's license.

1 Application must be made in a form approved by the commissioner. To approve the application,
2 the commissioner shall verify that: (a) the business entity has paid the appropriate fee; and (b)
3 the business entity has designated an individual licensed insurance producer who is responsible
4 for the business entity's compliance with the insurance laws of this state.

5 8. Pursuant to Mont. Code Ann. § 33-17-211(5) an insurance producer using an assumed
6 business name shall register the name with the Commissioner before using the name.

7 9. Pursuant to Mont. Code Ann. § 33-17-1001(1)(j), the Commissioner may suspend,
8 revoke, refuse to renew, or refuse to issue an insurance producer's license, adjuster license, or
9 consultant license, may levy a civil penalty in accordance with 33-1-317, or may choose any
10 combination of actions when an insurance producer, adjuster, consultant, or applicant for these
11 licenses has forged another's name to an application for insurance or to any document related to
12 an insurance transaction.

13 10. Pursuant to Mont. Code Ann. § 33-1-317 the commissioner may impose a fine not to
14 exceed the sum of \$25,000 upon a person found to have violated a provision of this code or
15 regulation promulgated by the commissioner, except that the fine imposed upon insurance
16 producers or adjusters may not exceed \$5,000 per violation.

17 11. Pursuant to Mont. Code Ann. § 33-17-1205 an individual licensed as an insurance
18 producer must comply with the basic continuing education requirement of § 33-17-1203 and
19 shall file biennially in a format supplied by the commissioner certification as to the approved
20 courses, lectures, seminars, and instructional programs successfully completed by that individual
21 during the preceding biennium. According to subsection (2) of 33-17-1205 "[i]f an individual
22 fails to comply with this section, the individual's license lapses. An individual with a lapsed
23 license may not conduct insurance business under another person's license, including a business
24 entity license affiliation."

25 12. Shipley is in violation of Mont. Code Ann. § 33-17-201(1) because he continued to
26 sell, solicit, or negotiate insurance or act as an insurance producer in this state after his license
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1 had lapsed.

2 13. Shipley is in violation of Mont. Code Ann. § 33-17-211(2) because he failed to
3 obtain an insurance producer's license for the Shipley Agency.

4 14. Shipley is in violation of Mont. Code Ann. § 33-17-211(5) because he used the
5 assumed business name "Shipley Agency" and failed to register the name with the Commissioner
6 before using the name.

7 15. Shipley committed multiple violations of Mont. Code Ann. § 33-17-1001(1)(j)
8 because he forged Diane Brien's name to several applications for insurance.

9 16. Shipley committed multiple violations of Mont. Code Ann. § 33-17-1205(2) because
10 he conducted insurance business under another person's license (Diane Brien), and/or a business
11 entity license affiliation.

12 17. Additionally and alternatively, pursuant to Mont. Code Ann. § 33-1-1001(1), the
13 Commissioner may suspend, revoke, refuse to renew, refuse to issue a license or may levy a civil
14 penalty in accordance with Mont. Code Ann. § 33-1-317 or choose any combination of actions
15 when an insurance producer is found to be in violation of Mont. Code Ann. § 33-17-1001(1).

16 **RELIEF REQUESTED**

17 For violating provisions of the Montana Code Annotated, the Department seeks the
18 following relief against Shipley in this matter:

19 1. Imposition of a civil penalty (administrative fine) against Shipley not to exceed the
20 sum of \$5,000.00 for each of the violations § 33-1-101, *et seq.* alleged hereinabove; and

21 **STATEMENT OF RIGHTS**

22 You, Phillip E. Shipley, are entitled to a hearing and to respond to this Notice and present
23 evidence and arguments on all issues involved in this case. You may have a formal hearing
24 before a hearing examiner appointed by the Commissioner as provided in the Montana
25 Administrative Procedure Act. Mont. Code Ann. § 2-4-601, *et seq.* If you demand a hearing,
26 you will be given notice of the time, place and the nature of the hearing.

1 You have a right to be represented by an attorney at any and all stages of this proceeding.

2 If you wish to resist the proposed action under the jurisdiction of the Commissioner, you
3 must so advise him within twenty (20) days of the date you receive this Notice. You may so
4 advise him by writing to Michael Winsor, Special Assistant Attorney General, State Auditor's
5 Office, 840 Helena Ave, Helena, Montana 59601. While so advising Mr. Winsor, you should
6 make clear whether you demand a hearing, or whether you waive formal proceedings and, if so,
7 what informal proceedings you prefer for handling this case. Pursuant to Mont. Code Ann. § 2-
8 4-603(2), you may not request to proceed informally if the action could result in suspension,
9 revocation or any other adverse action against a professional license.

10 Should you request a hearing, you have the right to be accompanied, represented, and
11 advised by counsel. If the counsel you choose has not been admitted to practice law in the state
12 of Montana, he or she must comply with the requirements of Application of American Smelting
13 and Refining Co., 164 Mont. 139, 520 P.2d 103 (1973).

14 **CONTACT WITH COMMISSIONER'S OFFICE**

15 If you have questions or wish to discuss this matter, please contact Michael Winsor,
16 Special Assistant Attorney General, State Auditor's Office, 840 Helena Ave, Helena, MT, 59601,
17 (406) 444-2040 or, within Montana, (800) 332-6148. If you are represented by an attorney, please
18 make any contacts with this office through your attorney.

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DATED this 21 day of June, 2007.

CERTIFICATE OF SERVICE

7003 3110 0000 6637 4827 _____ at the following address:

Darla Sautter